

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1084 OF 2019

Tanveer Sherali Khan. ..Applicant.
Versus
State of Maharashtra & Others. ..Respondents.

Mr. R. N. Bhavsar for the Applicant.
Mr. A. D. Khamkhedkar, APP for the Respondent-State.
Mr. U. A. Breed for Respondent No.3.

Coram : RANJIT MORE &
N. J. JAMADAR, JJ.
Date : **October 14, 2019.**

P. C. :

1. Heard the learned counsel for the Applicant, the learned APP for the Respondent-State and the learned counsel for Respondent No.3.
2. By this application, filed under section 482 of the Code of Criminal Procedure, 1973, the Applicant seeks to quash and set aside the FIR bearing CR. No. 154 of 2019 registered with Amboli Police Station, Mumbai at the instance of Respondent No.3 for the offences punishable under sections 376, 328, 379, 506(II) and 323 of the Indian Penal Code, 1860.
3. Learned Counsel appearing for the respective parties submitted that during the pendency of investigation into subject FIR, the parties have amicably settled their differences by way of

mutual settlement and pursuant to the understanding arrived at between them, present application is filed for quashing the above FIR, by consent of Respondent No. 3.

4. The first informant-Respondent No.3 herein has filed an affidavit dated 8th August 2019. In paragraphs 2 to 10, she has made following averments :

“2. I further say that the Applicant was doing the business of imitation jewellery and I was also in the same business of imitation jewellery from my matrimonial home.

3. I further say that I came into the contact of Applicant in the year January 2017 and came close enough due to which the relationship between me and my husband Mr. Hussain Tivle became strain. I further say that I and Applicant started loving each other and were willing to marry, therefore, I left my matrimonial house and started residing separately allongwith Applicant since October, 2018, at the address mentioned in the cause title.

4. I further say that as I was not willing to continue my matrimonial relationship with my husband and, therefore, as per Muslim Law offered KHULA to my husband in the month of February 2019 and I got divorce from my husband in the form of KHULA on 03/07/2019. The copy of KHULANAMA dated 03/07/2019 alongwith the English translated copy of the same is annexed as “Annexure A” by the Applicant in his application.

5. I say that there was a minor verbal altercation took place between me and Applicant in the month of April 2019 due to which there was misunderstanding arouse in my mind and in the heat of the moment I left house of Applicant and went to my father’s house.

6. I say that, due to the pressure built by my relatives the complaint was lodged by me with Respondent No. 2, against the Applicant on 27/04/2019 FIR No.154/2019 for

offences punishable u /s 376, 328, 379, 506(2) and 323 of Indian Penal Code. The copy of the FIR No.154/2019 dated 27/04/2019 is annexed as "Annexure B" by the Applicant in his application.

7. I further say that the Applicant in the first week of May, 2019 called me on my number and apologised for the altercation which had taken place between us and informed me that he is at his native place and also asked me to take divorce from my husband so the Applicant can marry me once he returns back in the month of June, 2019. I further say that at that time I realised my mistake and informed applicant that due to the pressure built by my relatives the complaint was lodged by me against the Applicant with Respondent No. 2 and further told that I am willing to withdraw my complaint filed against him.

8. I further say that in my statement recorded under section 164 of Criminal Procedure Code I have stated that I am willing to withdraw the said complaint as the same was lodged without knowing the consequences and due to the pressure built by my relatives and further stated that me and the Applicant are ready and willing to marry each other without any force, coercion or undue influence from anybody.

9. I further say that I got married to the Applicant as per the Muslim Law on 20/7/2019 bearing registration no.12 along with the English translated copy of the same is annexed and marked as "Annexure C" by the Applicant in his application.

10. I further say that I have started my happy married life with the Applicant and the Applicant has also accepted the responsibilities of my minor son Master Owais aged 6 years. Therefore, I am making this affidavit on oath giving my consent to allow the application filed by the Applicant to quash the complaint, i.e., FIR No.154 of 2019 dated 27/4/2019 lodged by me against the Applicant with Amboli Police Station."

5. Respondent No.2 is personally present before the

Court. On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing FIR in question initiated by her against the Applicant for the offence punishable under section 376 of IPC.

6. It is pertinent to note that Respondent No. 3 has obtained divorce from her ex-husband on 3rd July 2019 as evidenced by document at annexure-A, and she has got married with the present application on 20th July 2019, which is evidenced by marriage certificate at annexure-C.

7. It is true that the offence under section 376 of IPC is of serious nature and is an offence against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to Paragraph 28 of *Narinder Singh vs. State of Punjab [2014 AIR SCW 2065]*, wherein the Apex Court has held as under :

“28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well.

Therefore, only because FIR/Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

. The decision of the Apex Court, thus, makes it clear that the Court cannot decline to quash the FIR merely because the FIR incorporates a particular provision which is a serious offence or an offence against the society. The Court has to endeavour to find out whether the FIR indeed discloses ingredients of such offence and that the Court can accept the settlement and quash the FIR / Charge-sheet if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

8. So far as the present case is concerned, we have gone through FIR. Perusal of the same makes it clear that the

Respondent and the Applicant are adults, and their relations were consensual. It seems that FIR came to be filed out of some misunderstanding. In fact, it is a dispute between the private parties. Thus offence under section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution of the Applicant.

9. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject FIR alive except ultimately burdening the Criminal Courts which are already overburdened.

10. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the subject FIR. In that view of the matter, application is made absolute in terms of prayer clause (a).

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]